[Cite as *State v. Sitzes*, 2026-Ohio-4404.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CLARK COUNTY

STATE OF OHIO	:	
	:	C.A. No. 2026-CA-10
Appellee	:	
	:	Trial Court Case No. 22-CR-0437
v.	:	
	:	(Criminal Appeal from Common Pleas
BOBBY SITZES II	:	Court)
	:	
Appellant	:	**FINAL JUDGMENT ENTRY & OPINION**

. . . . . .

Pursuant to the opinion of this court rendered on November 6, 2026, the judgment of the trial court is affirmed.

Costs to be paid as stated in App.R. 24.

Pursuant to Ohio App.R. 30(A), the clerk of the court of appeals shall immediately send a copy of the court's ruling to each party and note that action on the docket. Additionally, pursuant to App.R. 27, the clerk of the court of appeals shall send a certified copy of this judgment, which constitutes a mandate, to the clerk of the trial court and note the service on the appellate docket.

For the court,



MARY K. HUFFMAN, JUDGE

TUCKER, J., and HANSEMAN, J., concur.

OPINION
CLARK C.A. No. 2026-CA-10

BOBBY SITZES II, Appellant, Pro Se
JOHN M. LINTZ, Attorney for Appellee

HUFFMAN, J.

{¶ 1} Bobby Sitzes appeals from the denial of his pro se petition for postconviction relief. For the following reasons, the judgment of the trial court is affirmed.

Facts and Procedural History

{¶ 2} Sitzes was previously convicted of multiple counts of rape, and the victims were his stepdaughter and stepson. This court set forth the following background in affirming Sitzes's convictions:

> On March 27, 2022, Z.C. disclosed to a relative that Sitzes . . . had sexually abused her for a number of years. On March 30, 2022, her half-brother, T.I., also disclosed that he had been sexually abused by Sitzes.
>
> Following an investigation, Sitzes was indicted on 32 counts of rape and one count of gross sexual imposition. Specifically, he was indicted in counts one through five for rape in violation of R.C. 2907.02(A)(1)(b) (under 13 years old) regarding Z.C. He was indicted in counts six through 20 for rape of Z.C. in violation of R.C. 2907.02(A)(2) (force or threat of force). In count 21, Sitzes was indicted for one count of gross sexual imposition in violation of R.C. 2907.05(A)(4) regarding T.I. He was indicted on counts 22 through 32 for rape of T.I. in violation of R.C. 2907.02(A)(1)(b). Counts 22 through 26 carried specifications that the victim was under 10 years old. Finally, in Count 33, he

was indicted of one count of rape in violation of R.C. 2907.02(A)(2) in connection with T.I.

State v. Sitzes, 2023-Ohio-3915, ¶ 2-3 (2d Dist.).

{¶ 3} A jury trial was conducted over the course of three days in October 2022. Z.C. was a month shy of her sixteenth birthday at the time of the trial, and T.I. was 14 years old. They described multiple instances of sexual abuse by Sitzes. *Sitzes* at ¶ 5-6. The State introduced recorded audio of three phone calls made by Sitzes while he was in jail awaiting trial. The State also introduced a video recording of Sitzes's police interview. *Id.* at ¶ 7. At the end of the State's case, the prosecution dismissed counts 19, 21, and 24. The jury convicted Sitzes of the remaining 30 charges. Following a sentencing hearing, Sitzes was sentenced to an aggregate term of life in prison without the possibility of parole. He was also designated a Tier 3 Sex Offender. *Id.* at ¶ 8. In affirming Sitzes's convictions, this court found that "there was competent, credible evidence provided by both children which was strongly corroborated by Sitzes admissions." *Id.* at ¶ 46.

{¶ 4} In April and May 2024, Sitzes filed a series of pro se motions, including his petition for postconviction relief, request for a hearing, affidavits, a motion to amend his petition, and a motion to supplement. On November 13, 2025, the trial court found that the petition for postconviction relief was timely, allowed the amendment and supplement, but denied the petition based upon res judicata. The entry states, "The Court finds that the defendant's claim of ineffective assistance of counsel is res judicata because it was raised and rejected on direct appeal in Case Number 23-CA-0007." Sitzes appealed.

Assignments of Error and Analysis

{¶ 5} Sitzes asserts five assignments of error, repeating arguments made in support of his petition for postconviction relief. The assigned errors, which we will consider together,

relate primarily to testimony by the victims that Sitzes claims is demonstrably false. He argues that trial counsel failed to challenge the testimony to support the defense theory of falsification by the victims. First, Sitzes claims that defense counsel failed to object to and investigate T.I.'s "alleged medical diagnosis and treatment" for urinary tract infections resulting from the sexual abuse. According to Sitzes, "[h]ad defense counsel conducted any investigation whatsoever, he would have found that the prosecutor's file/discovery contained both, an examination which resulted in normal findings and, a medications list that shown medications for an allergic reaction in 2013."

{¶ 6} Second, Sitzes claims that defense counsel failed to object to T.I.'s testimony that he had existing scabs and bruises from a fight with Sitzes on March 25, 2022, when he had been cleared of such injuries in an April 20, 2022 examination. In both of these assigned errors, Sitzes asserts that documents contained in the prosecutor's file supported that T.I.'s statements were false, defense counsel failed to familiarize himself with them, and because the testimony was unchallenged, it was accepted as true by the jury.

{¶ 7} Third, Sitzes asserts that in a forensic interview, Z.C. stated that she had been inappropriately touched by another student at school, advised a school counselor, and was told to ignore the other student. According to Sitzes, had defense counsel investigated and interviewed the school counselor, a mandatory reporter, he would have learned that Z.C. never spoke to any school staff about the alleged inappropriate touching as no report of the incident was ever completed, allowing counsel to contest Z.C.'s credibility.

{¶ 8} In his fourth assignment of error, Sitzes claims that prosecutorial misconduct is demonstrated in exchanges between the State and T.I. regarding the injuries on his legs and the urinary tract infections. According to Sitzes, if "the testimony was true the prosecution would have brought the evidence in under Evid.R. 803(4) for medical diagnosis

and treatment" but instead failed to correct the false statements of its own witness. He argues that, if the jurors were made aware the testimony was "perjured," they would have questioned the veracity of T.I.'s entire testimony.

{¶ 9} Fifth and finally, Sitzes argues that cumulative error affected the outcome of the trial. In addition to the above alleged errors, he asserts that in a recorded interview with law enforcement, he provided an alternative explanation for the victims' advanced sexual knowledge. Sitzes claims that on multiple occasions, he overheard his wife discussing his and her sexual relations with T.I. and J.C. He argues that in a recorded forensic interview, T.I. described an incident of oral sex Sitzes forced him to engage in and then stated that his mother told him that Sitzes "likes that sort of stuff," thereby giving credence to Sitzes's earlier statement to law enforcement.

{¶ 10} The State responds that the first four assigned errors are barred by res judicata, and that cumulative error is not demonstrated. In reply, Sitzes denies that res judicata is applicable.

{¶ 11} R.C. 2953.21 governs petitions for postconviction relief. "A petition for 'postconviction relief is a means by which the petitioner may present constitutional issues to the court that would otherwise be impossible to review because the evidence supporting those issues is not contained in the record of the petitioner's criminal conviction.'" *State v. Mott*, 2022-Ohio-2894, ¶ 10 (2d Dist.), quoting *State v. Monroe*, 2015-Ohio-844, ¶ 37 (10th Dist.). The postconviction relief process is a civil collateral attack on a criminal judgment and is not an appeal of the judgment. *State v. Calhoun*, 86 Ohio St.3d 279, 281 (1999).

{¶ 12} The petitioner "may file a supporting affidavit and other documentary evidence in support of the claim for relief." R.C. 2953.21(A)(1)(b). The trial court is required to consider

the petition and any supporting affidavits and documentary evidence. R.C. 2953.21(D). "When the evidence a defendant relies upon [is] dehors the record that evidence must meet a threshold of cogency." *State v. Hill*, 2005-Ohio-3176, ¶ 8 (2d Dist.), quoting *State v. Lawson*, 103 Ohio App.3d 307 (12th Dist. 1995). "Cogent evidence is that which is more than 'marginally significant' and advances a claim 'beyond mere hypothesis and desire for further discovery.'" *Id.*

{¶ 13} A postconviction relief petitioner is not automatically entitled to a hearing. *Calhoun* at 282. Instead, "a trial court has a gatekeeping role as to whether a defendant will even receive a hearing." *State v. Gondor*, 2006-Ohio-6679, ¶ 51. Before granting a hearing on a petition, the trial court shall determine whether there are substantive grounds for relief. *State v. Perry*, 2016-Ohio-4582, ¶ 24 (2d Dist.). It is the petitioner's initial burden to provide evidence containing sufficient operative facts to show a cognizable claim of constitutional error. *State v. Kapper*, 5 Ohio St.3d 36, 37-38 (1983). "A petitioner is not entitled to a hearing if his claim for relief is belied by the record and is unsupported by any operative facts other than Defendant's own self-serving affidavit or statements in his petition, which alone are legally insufficient to rebut the record on review." *State v. Coleman*, 2005-Ohio-3874, ¶ 17 (2d Dist.) "Broad conclusory allegations are insufficient, as a matter of law, to require a hearing." *Id.*

{¶ 14} In *State v. Goldwire*, 2005-Ohio-5784 (2d Dist.), this court discussed the role the doctrine of res judicata plays in the analysis of petitions for postconviction relief:

> "The most significant restriction on Ohio's Statutory procedure for postconviction relief is that the doctrine of res judicata requires that the claim presented in support of the petition represent error supported by evidence outside the record generated by the direct criminal proceedings." *State v.*

Monroe, Franklin App. No. 04AP-658, 2005-Ohio-5242. "Under the doctrine of res judicata, a final judgment of conviction bars the convicted defendant from raising and litigating in any proceeding, except an appeal from that judgment, any defense or any claimed lack of due process that was raised or could have been raised by the defendant at the trial which resulted in that judgment of conviction or on an appeal from that judgment." *State v. Perry* (1967), 10 Ohio St.2d 175, 180, 226 N.E.2d 104. "Our statutes do not contemplate relitigation of those claims in postconviction proceedings where there are no allegations to show that they could not have been fully adjudicated by the judgment of conviction and an appeal therefrom." *Id.* "To overcome the res judicata bar, the petitioner must produce new evidence that renders the judgment void or voidable, and show that he could not have appealed the claims based upon information contained in the original record." *State v. Aldridge* (1997), 120 Ohio App.3d 122, 151, 697 N.E.2d 228. "'Res judicata also implicitly bars a petitioner from 'repackaging' evidence or issues which either were, or could have been, raised, in the context of the petitioner's trial or direct appeal.[']" *Monroe*.

Id. at ¶ 11.

{¶ 15} "For a defendant to avoid dismissal of the petition by operation of res judicata, the evidence supporting the claims in the petition must be competent, relevant, and material evidence outside the trial court record, and it must not be evidence that existed or was available for use at the time of trial." *State v. Jackson*, 2007-Ohio-1474, ¶ 21 (10th Dist.). "Therefore, to overcome the res judicata bar, it is not sufficient for the petitioner to simply present evidence outside the record, he must also demonstrate that the evidence was not

available at the time of his trial, or at the time of his direct appeal." *State v. Jones*, 2002-Ohio-6914, ¶ 19 (11th Dist.). "Examples of evidence that [is] dehors the record and not in existence or available at the time of trial that would overcome res judicata would include: evidence withheld by the state; an affidavit by a witness sworn to after the trial in which the witness states that his testimony at trial was false; and, a DNA finding in cases that were heard before the use of DNA evidence." *Id.* at fn. 2.

{¶ 16} We review a trial court's denial of postconviction relief under R.C. 2953.21 for an abuse of discretion. *State v. White*, 2008-Ohio-1623, ¶ 45. "The term 'abuse of discretion' has been defined as a decision that is unreasonable, arbitrary, or unconscionable." (Citation omitted.) *State v. Howard*, 2014-Ohio-4602, ¶ 8 (2d Dist.).

{¶ 17} Sitzes directs our attention to a portion of the trial transcript, to Exhibits B, C, and D attached to his petition for postconviction relief, and to a section of "Investigator Notes" prepared by a Springfield Police Division detective on April 22, 2022. The portion of the transcript upon which Sitzes relies reflects that T.I. described a final physical altercation with Sitzes that arose when T.I. escaped an attack by him, stating that "to this day there's a couple scars that still won't go away on my legs." Thereafter, the following exchange occurred:

> Q. . . . And what are the scars from?
>
> A. The scars are from the last time I ever fought him and ever since that ever happened, those things just haven't healed.
>
> Q. Do you want to go ahead and lift up your leg and just show me what you're talking about?
>
> A. Right here there's a little bit of a scab. There's a couple bruises right here and since most of them have healed, some of them aren't healing. There's two

scabs here and ever since that, there's still bruises from my legs there (indicating).

Q. And you're saying that's when you fought with Bobby over sex acts?

A. Yeah.

. . .

Q. Since you were able to get away, since that time - -

. . .

Q. - - have you had any medical issues related?

. . .

A. The only one I would count would be a UTI - -

. . .

A. - - around that time.

Q. . . . You had a UTI?

A. Yeah. Around like two months before everybody found out.

Q. . . . And did you think that was a result of what was going on with Bobby?

A. Yeah.

. . .

A. Because after what happened with Bobby I was getting UTIs regularly.

{¶ 18} Exhibit B appears to be a portion of a summary of a medical examination for T.I., with an arrow drawn to the following comment: "Extremities: Atraumatic, no cyanosis or edema." Exhibit C also appears to be another portion of a record completed after a medical examination of T.I. An arrow is drawn to the following comment: "Skin: Color, texture and turgor normal. No rashes, lesions or bruising." It is unclear from the documents when the

exams were performed, where they were performed, or by whom, although Sitzes asserts that the examination of T.I. occurred on April 20, 2022, about six months before trial.

{¶ 19} Exhibit D appears to be a summary of a March 29, 2022 forensic interview of Z.C. An arrow is drawn to the following paragraph:

> [Z.C.] disclosed that there were incidents at school involving another student touching her inappropriately and being bullied by other kids. [Z.C.] stated she made a counselor aware of the issue and they told her to just ignore and avoid the other student. Due to these issues she asked her mom to change schools and she now attends [a different school] and has been there for a few months.

{¶ 20} Finally, the "Investigator Notes" were used to refresh a detective's recollection at trial but were not admitted. The document states in part: "Bobby presented the theory that [his wife] talking about their sex life multiple times in front of the kids and with [Z.C.] having feelings for him as to be the reason why this had happened."

1. Ineffective Assistance of Counsel

{¶ 21} We review alleged instances of ineffective assistance of trial counsel under the two-pronged analysis set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), and adopted by the Supreme Court of Ohio in *State v. Bradley*, 42 Ohio St.3d 136 (1989). "Pursuant to those cases, trial counsel is entitled to a strong presumption that his or her conduct falls within the wide range of reasonable assistance." *State v. Leonard*, 2017-Ohio-8421, ¶ 10 (2d Dist.), citing *Strickland* at 688. "To establish ineffective assistance of counsel, a defendant must demonstrate both that trial counsel's conduct fell below an objective standard of reasonableness and that the errors were serious enough to create a reasonable probability that, but for the errors, the outcome of the case would have been different." *Id.* at ¶ 11. "'A reasonable probability is a probability sufficient to undermine confidence in the

outcome.'" *Sitzes*, 2023-Ohio-3915 at ¶ 14, quoting *State v. Bradley*, 42 Ohio St.3d 136, 142 (1989).

{¶ 22} Sitzes does not claim that the State withheld evidence, and to the extent that defense counsel may have been aware of the information contained in Exhibits B, C, and D, "Ohio courts recognize that 'the cross-examination of a child victim is a tactical decision that must be made by counsel.'" *State v. J.L.S.*, 2026-Ohio-363, ¶ 114 (10th Dist.), quoting *State v. Smith*, 1992 WL 55429, *4 (6th Dist. Mar. 20, 1992). "[D]ebatable tactics '"do not render counsel's assistance ineffective,"" and ""[t]his is particularly true in sex cases with minor victims where counsel may be wise to tread lightly in questioning."'" *Id.*, quoting *State v. Williams*, 2017-Ohio-8898, ¶ 22 (1st Dist.), quoting *State v. Johnson*, 2016-Ohio-4934, ¶ 29 (1st Dist.). *See also State v. Vulgamor*, 2021-Ohio-3147 (4th Dist.) ("A more rigorous cross-examination could invoke more emotion and greater sympathy by the jury.").

{¶ 23} In support of his first three assigned errors, Sitzes offers only broad, conclusory allegations. T.I.'s urinary tract infections and injuries were discussed during trial, and the prosecutor tested T.I.'s credibility by asking him to show his injuries to the jury. While Exhibits B and C are outside the record, Sitzes has not shown that the evidence was not available at the time of trial or at the time of his direct appeal. Put differently, the exhibits are not competent evidence dehors the record for purposes of postconviction relief, and Sitzes's ineffective assistance of counsel claims based upon this evidence are barred by res judicata. Even if we were to find the evidence competent, Sitzes cannot demonstrate prejudice, given the overwhelming evidence of his guilt. Sitzes's first and second assignments of error are overruled.

{¶ 24} Regarding Sitzes's third assignment of error involving Z.C., Exhibit D is also outside the record, and Sitzes again fails to show that it was not in existence or available at

the time of trial or direct appeal to survive the res judicata bar. Further, the evidence is merely impeaching and not material to the outcome or trial. Finally, again, given the overwhelming evidence of his guilt, Sitzes cannot demonstrate prejudice. Sitzes's third assignment of error is overruled.

2. Prosecutorial Misconduct

{¶ 25} "Generally, prosecutorial misconduct will not provide a basis for overturning a conviction unless, on the record as a whole, the misconduct can be said to have deprived the defendant of a fair trial." *State v. Buck*, 2017-Ohio-8242, ¶ 56 (1st Dist.), citing *State v. Lott*, 51 Ohio St.3d 160, 166 (1990). "The test for whether prosecutorial misconduct mandates reversal is whether the prosecutor's remarks or actions were improper, and, if so, whether they prejudicially affected the substantial rights of the accused." *Id.*, citing *State v. Smith*, 2002-Ohio-6659, ¶ 45. "In a claim of prosecutorial misconduct based on the use of false or perjured testimony, the defendant has the burden to 'show that (1) the statement was actually false; (2) the statement was material; and (3) the prosecution knew it was false.'" *Id.* at ¶ 75, quoting *State v. Iacona*, 93 Ohio St.3d 83, 97 (2001), quoting *United States v. Lochmondy*, 890 F.2d 817, 822 (6th Cir. 1989) "Where it is clear beyond a reasonable doubt that a jury would have found the defendant guilty even absent the alleged misconduct, the defendant has not been prejudiced, and his conviction will not be reversed." *State v. Stevenson*, 2008-Ohio-2900, ¶ 42 (2d Dist.), citing *State v. Loza*, 71 Ohio St.3d 61, 78 (1994).

{¶ 26} Again, Exhibits B and C are not competent evidence dehors the record for purposes of postconviction relief, and Sitzes cannot establish prosecutorial misconduct on this basis alone due to the application of res judicata. Even if that were not true, or if misconduct were demonstrated, Sitzes has failed to show that the prosecutor's presentation

of T.I.'s testimony prejudicially affected his substantial rights. T.I.'s testimony regarding bruising and urinary tract infections was not material to the outcome of the trial, and the purpose of Exhibits B and C is merely to impeach T.I.'s testimony. Given the overwhelming evidence of Sitzes's guilt, his fourth assignment of error is overruled.

3. Cumulative Error

{¶ 27} "Under the cumulative error doctrine, 'a conviction will be reversed when the cumulative effect of errors in a trial deprives a defendant of a fair trial even though each of the numerous instances of trial-court error does not individually constitute cause for reversal.'" *State v. Said*, 2024-Ohio-277, ¶ 45 (2d Dist.), citing *State v. Powell*, 2012-Ohio-2577, ¶ 223. Sitzes's cumulative error argument fails for two reasons.

{¶ 28} In *State v. Gapen*, 2005-Ohio-441, ¶ 65 (2d Dist.), appellant asserted that "even if none of his individual grounds for relief in his postconviction petition [were] sufficient to warrant an evidentiary hearing or other relief, the cumulative effect of those errors is sufficient to 'merit reversal or remand for a proper postconviction process.'" This court concluded, however, that "because we have found only one error, and not multiple errors, in the trial court's dismissal of Defendant's postconviction claims, there can be no cumulative effect." *Id.*

{¶ 29} Having determined that ineffective assistance of counsel and prosecutorial misconduct are not demonstrated, the only remaining claim by Sitzes is that he provided an alternative explanation for the victims' advanced sexual knowledge. Even if we were to conclude that Sitzes's vague fifth assignment of error had merit (which we do not), a sole assertion of error cannot support a claim of cumulative error.

{¶ 30} Most significantly, even if multiple errors were found, cumulative error is not itself a discrete constitutional violation but rather a theory that the combined effect of multiple

errors warrants relief. Accordingly, such a claim cannot satisfy Sitzes's initial burden of providing evidence of sufficient operative facts to demonstrate a cognizable claim of constitutional error. Based upon the foregoing, Sitzes's fifth assigned error is overruled.

Conclusion

{¶ 31} An abuse of discretion is not demonstrated in the denial of Sitzes's petition for postconviction relief based upon ineffective assistance of counsel, and prosecutorial misconduct, and cumulative error is not demonstrated. Having overruled Sitzes's assigned errors, the judgment of the trial court is affirmed.

. . . . . .

TUCKER, J., and HANSEMAN, J., concur.